

EXHIBIT “F”

EXHIBIT F

Bright Red Chords - Domino, Comparison of Drums at Starts of Verses
by Dr. David Stern, Ph.D. in Music Theory

I noticed a similarity in the use of drum breaks in both songs. In order to compare the drum breaks at the start of each verse, I did a transcription which includes the opening lines of each verse for both songs, and the basic drum patterns for these same passages.

For the following description, please refer to Exhibit G for the musical examples.

Verse 1

"Bright Red Chords:" The drum drops out for the start of verse 1 in bar 10, with no drums until the steady beat at bar 11 which starts at the final word of verse 1's initial melodic line.

"Domino:" This pattern is mostly intact for Domino's first verse, bars 4-5. The difference here is that there is no drumbeat prior to bar 5, because it is near the start of the song and the drums have not yet come in altogether. However, the rest of the pattern, no drums to accompany the initial vocal line, and steady drumbeat starting at the last word of that initial melodic line in the following measure (bar 5), is there.

Verse 2

The drumbeat drops out for the opening line of verse 2 for both songs (compare Bright Red Chords, bars 31-32 and Domino, bars 39-40). Again, in both songs the steady drumbeat resumes in the corresponding place, at the last word of the text line.

The absence of drums to highlight the starts of verses and the use of a steady drumbeat starting at the last word of the initial melodic line for each verse creates an effect that is similar in both songs. This effect is heightened by the fact that the melodic material in the first bar of each verse (the part without the drumbeat going) consists of the same scale degrees within their respective keys and essentially the same rhythms in both songs.

EXHIBIT “G”

Comparison of Drum Usage at start of verses in Biggest Red Chords and Domino (given in D major) Domino has been transposed to D major for ease of comparison

W6m190 has been transposed to D major for ease of comparison

...the only one who can do this is the person who has the right to do it. That is, the person who has the right to do it is the only one who can do it.

Common: *gesetze* (กฎหมาย กฎหมาย) 法律 法規

Right Read Chapters: 100m's and the Last VERSE 2

Domino: jessie (original key G major) VERSE 2

N.B. VERSE 2: IN BOTH SONGS DRUM DROPS OUT FOR 1ST LINE
AND RESUMES STUDY BEAT AT THE CORRESPONDING PLACES
- STARTING AT LAST WORD OF THE TEXT LINE

29 D⁵ F# G⁵ E A⁵ F# G⁵ A

30 It hits my hips be-fore my mind — (lightest drum fill)

31 32

33 34

35 36

37 38

39 40

Domina: esse (original key: G major) VERSE 2

Al

G⁵/D D(mix) G⁵/D D(mix) G⁵/D

You got me los-ing my mind

37

N.B. IN BOTH SONGS, NO DRUMBEAT FOR 1ST BAR OF VS. 1, STEADY DRUMBEAT COMES IN AT THE CORRESPONDING PLACES FOR LAST WORD OF THE TEXT LINE.

Power chords A D⁵ F# G⁵ A D⁵ F# G⁵ A A¹

I put the needle in the groove
10 9 8 7 6 5 4 3 2 1 11

Dominante: **essie** (orthogonal key: G major) VERSE 1

Al

D(molita) G⁵/D D(molita) G⁵/D D(molita) G⁵/D

I'm feel-ing sex-y and
free
5 4 3 2 1

EXHIBIT “H”

EXHIBIT H

Comparison of the Verse Melodies to "Bright Red Chords",
"Domino", and "Rush"
by Dr. David Stern, Ph.D. in Music Theory

I was hired by Will Loomis in 2012 to do expert analytical assessment, transcribing and comparing the songs "Bright Red Chords" recorded by Loomis and the Lust and "Domino" recorded by Jessie J. I was subsequently asked to assess the relation between these songs and "Rush" recorded by Big Audio Dynamite, having been told that the legal defense team was claiming that "Bright Red Chords" sounds like the earlier song "Rush." I understand that "Rush" was introduced to demonstrate the presumption that the melodic material shared by "Bright Red Chords" and "Domino" is commonplace and not strongly distinguished, also appearing in the earlier song "Rush." Despite similarities, there are significant differences in the verse melodies of "Bright Red Chords" and "Rush."

My analytical conclusions concerning these three songs follow here.

For the following analysis, please see Exhibit I where I have placed all three songs in chronological order and provided a comparative musical analysis.

Note on labels: In Exhibit I, melodic figures are labelled with letters. If the labels are the same, the figures are related. Often the figures are varied, so A1 means a variation of A, A2 a different variation of A, et cetera. I labeled the opening melodic figure of Rush "A" to distinguish it from the other forms of melodic figure A found at the start of the other songs. I have retained the same labeling that I used for specific instances of figures A and B for the first verse of "Bright Red Chords" and "Domino" in my analysis from Exhibit D, including the phrase "end of B" or "end of B varied" to keep the terminology consistent. In Exhibit I, the use the letter C indicates the presence of the same melodic figure at the very end of verse 1 in "Bright Red Chords" and "Rush."

The first verse for each song has four distinct melodic lines consisting of two bars each (altogether forming a standard-length 8 bar verse).

The first melodic line of "Bright Red Chords" has some notes and rhythms in common with the first melodic line of "Rush" (labelled "A"), but starts on a different note and with a faster melodic rhythm (two eighth notes b-d1) than the opening melodic note of "Rush" (one quarter note d1). In my opinion this makes the melodic opening "Bright Red Chords" more distinctive and catchy than the opening line of "Rush." It is a real difference, and the ending of the first line for "Bright Red Chords" has an embellishment f#1-e1-f#1 not in "Rush."

The melodic settings for verse one text lines 2 and 4 are distinctly different in "Bright Red Chords" from the melodic settings of text lines 2 and 4 in "Rush," although they end with the same notes on the final word; this constitutes more of a structural connection than the actual use of another song's melody. The melodic setting of text line three in

Rush (at "and not change a single thing) sounds like a variant of the opening melodic idea of "Rush," but it is rather loosely varied and so where there could have been a strong parallel with the third line of "Bright Red Chords" (at "I watch the record spin around) there is instead a distinctly different melodic idea.

Despite the similarities in the compared compositions noted with parts of melodic figures found in common to both songs and both songs ending each text line setting with the same notes (creating a structural parallel between the songs), none of the four verse lines from "Rush" are found to be duplicated exactly in "Bright Red Chords." The use of melodic figures is looser in "Rush" than in the other songs. This can be seen in Exhibit I where none of the first verse melodic figures of Rush are repeated without variation, whereas in the other two songs the opening melodic figures return for their third text line setting.

My opinion on the relationship between the first verse melodies of "Rush" and "Bright Red Chords" is that on the one hand there are some similarities in melody and musical structure. The melody of "Bright Red Chords" at times verges on being just like that of "Rush" but diverges sufficiently to remain similar but still independent from Rush. My listening to subsequent verses of "Rush" does not alter my opinion on this, although I have only presented a detailed comparison of verse 1; I did not find that later verses were generally closer to the melodic substance of "Bright Red Chords" than the first verse.

Analytical Conclusions of the First Verse Melodies of "Rush," "Bright Red Chords" and "Domino."

The melodic material of the verse to "Domino" is closer musically to "Bright Red Chords" than to the melodic lines to the verse of "Rush". This is because both "Bright Red Chords" and "Domino" start with the more distinctive version of A starting with eighth note rest followed by three eighth notes (b-d1-b seen at the start of Exhibit I) as opposed to the opening of "Rush" starting with quarter note d1. This opening is unique to "Bright Red Chords," not found in "Rush," and is this divergence from the opening of "Rush" that is repeatedly used to begin text lines of both verses of "Domino."

Interestingly, examining "Rush" affords the opportunity (because of its looseness in treatment of melodic ideas) to highlight the fact that in comparison, the various uses of melodic idea "A" in both "Bright Red Chords" and "Domino" is more distinct and well-defined as a specific idea to be repeated; even the variants in those two later songs tend to be less far-ranging than those heard in "Rush."

It is my opinion that the verses of "Domino" rely very heavily on a melody that had earlier been used in "Bright Red Chords," that is very catchy and distinct, and that is the same melody with some minor embellishments or variants. It is my opinion that there is a substantial similarity between these two songs.

EXHIBIT “I”

Exhibit I
First Verse Comparison of Bright Red Chords, Domino, and Rush
(all songs given in D major for ease of comparison)

Rush: Big Audio Dynamite (orig. key A major) - bar no. from album version

"A"

1 N.C. D D(sus4) D D(sus4) D D(sus4)

If I had my time a - gain I would do it all the same

Bright Red Chords: Loomis and the Lust Final Version (original key D major)

A1

10 Power chords D⁵ F#⁵ G⁵ A B' D⁵ F#⁵ G⁵

I put the need-le in the groove to a song that fits the mood

Domino: Jessie J (transposed to D, original key G major)

A1'

4 G⁵/D D⁵ G⁵/D D G⁵/D D(Dominis) G⁵/D

I'm feel-ing sex - y and free like rain is rain - ing on me

"A 2"

Rush 5 D D(sus4) D D(sus4) D D(sus4) D D(sus4) C

and not change a sin-gle thing e - ven when I was to blame

A'

BRC 14 D⁵ F#⁵ G⁵ A D⁵ F#⁵ G⁵ C

I watch the re - cord spin a - round in - to a wall of sound

A1'

Domino 8 D⁵ G⁵/D D D(Dominis) C

You're like a shot of pure gold I think I'm 'bout to ex - plode

EXHIBIT “D”

Page 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CERTIFIED COPY

4 WILL LOOMIS, an individual,)
5 Plaintiff,)
6 vs.) No. CIV12-5525
7 JESSICA CORNISH, P/K/A JESSIE J,)
8 an individual; UNIVERSAL MUSIC)
9 GROUP, INC., a Delaware)
Corporation; LAVA RECORDS, LLC, A)
limited liability company;)
UNIVERSAL REPUBLIC RECORDS,)
10 Business form unknown; DOES 1-10,)
inclusive,)
11)
12 Defendants.)

VIDEOTAPED DEPOSITION OF DAVID STERN, Ph.D.
LOS ANGELES, CALIFORNIA
FRIDAY, SEPTEMBER 13, 2013

REPORTED BY:

LESLIE L. WHITE, CSR NO. 4148
JOB NO.: 65877

Page 2

1

2

3

4 Friday, September 13, 2013

5 1:12 p.m.

6

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3

4

5

6

1

6

10

1

Page 3

1 A P P E A R A N C E S:

2

3 LAW OFFICES OF EDGAR B. PEASE III

4 Attorneys for Plaintiff

5 16255 Ventura Boulevard

6 Encino, California 91436

7 BY: EDGAR PEASE III, ESQ.

8

9

10 MITCHELL SILBERBERG & KNUPP

11 Attorneys for Defendants

12 12 East 49th Street

13 New York, New York 10017

14 BY: JEFFREY MOVIT, ESQ.

15 (PRESENT THROUGH VIDEO CONFERENCE)

16

17 ALSO PRESENT:

18 MICHAEL MULLIN, Videographer

19 KIM JACKSON

20 WILL LOOMIS

21

22

23

24

25

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1 I N D E X
2 WITNESS: EXAMINATION PAGE
3 DAVID STERN, Ph.D. BY MR. MOVIT 6
4
5
6

E X H I B I T S

7 DEFENDANTS' PAGE
8 Exhibit 43 Plaintiff Will Loomis' Expert 8
Witness Designation
9
10 Exhibit 44 Exhibit D of Dr. Stern 11
11 Exhibit 45 Document starting with 22
Figure 1: Pickup bar, Figure
1: Second bar notes
12
13 Exhibit 46 Exhibit I of Dr. Stern 68
14 Exhibit 47 Document starting with 71
Figure 1: Pickup bar, Figure
1: Second bar notes
15
16 Exhibit 48 CD labeled Ferrara Audio 81
Exhibit 1
17 Exhibit 49 Defendants' Expert Disclosures 85
Pursuant to Rule 26(A) (2)
18
19

20 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER
21 (NONE)

22 REQUESTED TO BE MARKED
PAGE/LINE
23 42/2
24 59/25
25

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1 LOS ANGELES, CALIFORNIA; FRIDAY, SEPTEMBER 13, 2013

2 1:12 p.m.

3 -000-

4 THE VIDEOGRAPHER: We are now on the video
5 record. The following is the videotaped deposition
6 of David Stern, Ph.D. in the matter of Loomis
7 vs. Cornish.

14 Today's date is Friday, September 13th,
15 2013. The time is now approximately 1:12 p.m.

16 My name's Michael Mullin from TSG
17 Reporting, and I'm the legal video specialist. The
18 court reporter is Leslie White.

19 Will all counsel introduce themselves for
20 the video record, please.

21 BY MR. MOVIT:

22 Q Good afternoon, Dr. Stern. My name is
23 Jeff Movit. I'm with the Law Firm of Mitchell
24 Silberberg & Knupp, and I am counsel for defendants
25 in this action.

1 And with me is Dr. Lawrence Ferrara.

2 MR. PEASE: Good afternoon --

3 THE WITNESS: Good afternoon --

4 MR. PEASE: Good afternoon. My name is Ed
5 Pease, P-e-a-s-e. I'm representing Will Loomis,
6 plaintiff in this action, who is present seated at
7 this conference table.

8 And also to my right is Dr. David Stern,
9 Ph.D., the deponent.

10 THE VIDEOGRAPHER: Will the court reporter
11 please swear in the witness.

12

13 DAVID STERN, Ph.D.,
14 the witness herein, having been
15 first duly sworn, was examined
16 and testified as follows:

17

18 EXAMINATION

19 BY MR. MOVIT:

20 Q Dr. Stern, have you ever been deposed
21 before?

22 A This is my first time.

23 Q Okay. So why don't I give you the ground
24 rules for a deposition.

25 I'm going to ask questions, to the extent

1 that there is an objection to the form of the
2 question, Mr. Pease will make that, and then you're
3 required to answer the question after that.

4 Please answer questions with words and not
5 with gestures. Although this is being videotaped,
6 we want to make sure we have a clear record, and the
7 court reporter has difficulty taking down shrugs and
8 nods.

9 So please answer with a "yes" or a "no,"
10 as opposed to a shrug or a nod. Similarly, please
11 don't answer questions with "uh-huh" or "un-huh."
12 Those are, again, very hard for the court reporter
13 to transcribe accurately.

14 Dr. Stern, is there any reason that you
15 can't testify today to the best of your ability?

16 A No. There is one thing I want to bring
17 up, though. And that is that I am recovering from
18 emergency eye surgery four weeks ago, and so I may
19 just ask occasionally for a little break to regather
20 my energy, but I think I'll be overall fine.

21 Q That's fine, when a question is not
22 pending. That's fine.

23 A Okay.

24 Q Do you have any problems with your memory
25 at all?

1 A No.

2 MR. MOVIT: All right. Kim, can you please
3 take out the document that I sent you yesterday for
4 marking that is labeled, "Plaintiff Will Loomis'
5 Expert Witness Designation."

6 MS. JACKSON: Yep.

7 MR. MOVIT: This will be Exhibit 43.

8 (Exhibit 43 was marked for
9 identification by the Reporter.)

10 MS. JACKSON: Expert Witness Designation?
11 There is two of them.

12 MR. MOVIT: The one that says, "Plaintiff Will
13 Loomis' Expert Witness Designation."

14 MS. JACKSON: Yeah. One is thick, and one is a
15 little bit thinner.

16 MR. MOVIT: You have you two there, Kim, that
17 say, "Plaintiff Will Loomis' Expert Witness
18 Designation"?

19 MS. JACKSON: Yeah.

20 MR. MOVIT: Could you just -- could you hold
21 them up to the camera for me, please.

22 MS. JACKSON: Here it is.

23 MR. MOVIT: A little closer. Okay, that's it.
24 And what is the other one?

25 No, those are the same document. They

1 should be the same thickness.

2 MS. JACKSON: No, but I'll give him one of
3 these.

4 MR. MOVIT: The thicker one, please.

5 MS. JACKSON: Sure.

6 THE WITNESS: Thank you.

7 MS. JACKSON: I'll double-check the
8 attachments.

9 THE WITNESS: This is multiple copies.

10 MR. MOVIT: That's why it is thicker.

11 MS. JACKSON: There is one PDF. Well, I have
12 one copy here.

13 MR. MOVIT: Could you -- let's try the other
14 copy.

15 MS. JACKSON: I apologize. I sent them to
16 imaging.

17 MR. PEASE: This one is "Defendants' Expert"
18 the thicker one --

19 MR. MOVIT: That's a different document. Kim,
20 could you please take back the one that says
21 "Defendants."

22 MS. JACKSON: Yeah, taking them back.

23 MR. PEASE: Let me take a look at that one
24 first. She has a sticker, so this is her copy.

25 THE WITNESS: I have my own copy here.

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1 MR. PEASE: No, that goes -- that's attached.

2 THE WITNESS: Okay. All right.

3 MS. JACKSON: I have no idea what happened to
4 that. Apologies, Jeff.

5 MR. MOVIT: That's okay.

6 MS. JACKSON: I don't know what happened, but
7 they are set now with what you asked for.

8 MR. MOVIT: Okay.

9 Q So Exhibit No. 43 is in front of you,
10 Dr. Stern?

11 A Yes.

12 Q Okay. Is this your expert report in this
13 action, Loomis v. Cornish?

14 A Yes.

15 Q Okay. Dr. Stern, have you ever submitted
16 an expert report in any other litigation before?

17 A Pretrial reports.

18 Q Have you ever submitted pretrial report in
19 any litigation before?

20 A Yes.

21 Q Okay. Was that once or more than one
22 time?

23 A Twice.

24 Q Okay. Do you recall the name of the first
25 case?

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1 A It's a pretty big one. Usher --
2 Straughter vs. Usher. Something like Ernest
3 Straughter, S-t-r-a-u-g-h-t-e-r, et al. vs. Usher,
4 et al.

5 Q And what was the other one, if you recall?

6 A That one I have -- they never went to
7 trial, to my knowledge. I told them not -- not to
8 pursue it, based on what I found. That was my
9 advice. The lawyer was Adam Aparicio.

10 Q Okay. Any other reports that you have
11 done pertaining to a lawsuit?

12 A No, apart from the current one.

13 Q Okay. Dr. Stern, we're now going to mark
14 another exhibit.

15 Kim, this is called, internal to you,
16 Exhibit DDD?

17 MS. JACKSON: Okay, I have that. Just a
18 moment.

19 MR. MOVIT: I'm sorry, yeah, that's correct,
20 DDD.

21 MS. JACKSON: DDD. This is Exhibit 44?

22 MR. MOVIT: Yes.

23 (Exhibit 44 was marked for
24 identification by the Reporter.)

25 ///

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1 THE WITNESS: Thank you.

2 MS. JACKSON: Uh-huh.

3 MR. PEASE: Just for the record --

4 MR. MOVIT: Yes.

5 MR. PEASE: -- I provided a four-disc one-page
6 document in an envelope, I provided it to Kim -- it
7 is Kim; correct?

8 MS. JACKSON: Yes.

9 MR. PEASE: And that has the four CDs, and that
10 is part of the -- referenced in the report. So it
11 should be included as part of that I would imagine.

12 MR. MOVIT: And Mr. Pease has represented that
13 the four sound recordings that he's just provided to
14 Kim are the sound recordings embodied in the
15 compositions that Dr. Stern has referred to as BRC
16 Original, BRC Final, Domino and Rush and no others.

17 MR. PEASE: That's correct.

18 MR. MOVIT: Okay. Thank you.

19 Q Dr. Stern, is Exhibit 44 in front of you
20 yet?

21 A Yes.

22 Q Okay, Dr. Stern, Exhibit 44 is a copy of
23 Exhibit D to your expert report in this case;
24 correct?

25 A Correct.

Page 13

1 Q Okay. And Exhibit 44 contains
2 transcriptions; correct?

3 A Correct.

4 Q Okay. Transcription of a composition that
5 you referred to as BRC Original, a composition that
6 you referred to as BRC Final and Domino; correct?

7 A On here I didn't use "BRC." I just said
8 Bright Red Chords.

9 Q Okay. On page 2 of this exhibit, and
10 thereafter you refer to them with those names.

11 A Oh, yes, you're right, on the short
12 headings, thank you.

13 Q Okay. So the one that you have called BRC
14 Original, you have also called "Bright Red Chords
15 Loomis and the Lust copyright version done at Record
16 Plant Original key D major"; is that correct, sir?

17 A That is correct.

18 Q Okay. And is it your understanding that
19 that is the version of Bright Red Chords that Will
20 Loomis deposited at the Copyright Office?

21 A That is my understanding.

22 Q Okay. The second version which you have
23 called both "BRC Final and Bright Red Chords, Loomis
24 and the Lust video version original key D major,"
25 can you please explain what you understand this

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1 composition to be.

2 A The final released version.

3 Q Okay. What do you mean by "video
4 version," sir?

5 A There is a video. They did a video of
6 this song. It's the version of the song on the
7 video.

8 Q Okay.

9 A It's a more polished recording.

10 Q Where did you see this video?

11 A On YouTube.

12 Q Okay. And the third composition that you
13 have transcribed here is Jessie J -- I'm sorry,
14 strike that. "Domino, Jessie J, original key G
15 major, transposed to D major for comparison with
16 BRC."

17 Dr. Stern, where did you get the sound
18 recording that you have transcribed as Domino?

19 A I used the video version on YouTube also.

20 Q Okay, thank you.

21 Dr. Stern, I'd like you to please turn to
22 the second page of your -- of this exhibit here,
23 Exhibit 44, and will you please look, sir, at the
24 BRC Final transcription on this page.

25 A Yes.

Page 15

1 Q Okay. And my question, sir, is commencing
2 with measure 10 and extending to measure 17, two
3 pages later -- my question is going to concern those
4 measures.

5 A All right.

6 Q Dr. Stern, is it your opinion that
7 measures 10 through 17 of BRC Final contain all of
8 the material in Bright Red Chords, leaving aside
9 repeated material that you contend was copied by
10 Domino?

11 A It certainly has the core material. It
12 has Figure A and the ending of Figure B there. So
13 those are the ones that I'm saying on musical
14 grounds are common to both pieces.

15 Q So is it fair to say that what your --
16 one, it's your opinion that it is common musically
17 to both pieces, is entirely embodied in measures 10
18 through 17, understanding that it may be repeated
19 elsewhere, but it is all embodied in those measures?

20 A I think so. Let me just take a quick
21 look.

22 Q Sure, of course.

23 A Yes, I would agree to that.

24 Q So, Dr. Stern, would you similarly agree
25 that measures 9 through 17 in your transcription of

Page 16

1 BRC Original contain all of the material in BRC
2 Original, leaving aside material that is repeated,
3 that you contend was copied by Domino?

4 A I am not sure I quite got the question.
5 If you're saying --

6 Q Sure. I'm asking my question before about
7 measures 10 through 17 of BRC Final.

8 A Right.

9 Q And now I'm just asking the same question
10 about measures 9 through 16 of BRC Original.

11 A Yes, all of the relevant material was
12 there in the Original copyright version.

13 Q Uh-huh, in measures 9 through 16?

14 A Absolutely.

15 Q Okay. Thank you, sir.

16 Do you have a pen there, Dr. Stern?

17 A I do now.

18 Q Okay. I would ask you, sir, to please
19 write on Exhibit D -- I'm sorry, your Exhibit D,
20 which is Exhibit 44, for purposes of this
21 litigation --

22 A Yes.

23 Q -- I would ask you to please write, for
24 measures 10 through 17 of BRC Final, and the
25 equivalent measures for the other two compositions

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1 that you have transcribed here, if you would please
2 write for each note the interval -- strike that.
3 Strike that.

4 If you would please write the scale
5 degree, the note, the name of the note, and the
6 rhythmic value for measures 10 through 17 and the
7 equivalent measures in the other two compositions
8 that you have transcribed.

9 MR. PEASE: I'm going to object just to the
10 form of the question, and the fact that it starts on
11 9. There is an overlapping bracket, but aren't we
12 going from 9 to 17?

13 MR. MOVIT: We're going from 10 -- so the
14 record is clear, we're going from 10 through 17 of
15 BRC Final. We're going from 9 through 16 of BRC
16 Original, and we're going from 4 to 11 of Domino.

17 MR. PEASE: Thank you.

18 THE WITNESS: You want the entire verses done
19 this way?

20 BY MR. MOVIT:

21 Q Just measures 10 through 17 of BRC Final,
22 measures 9 through 16 of BRC Original and measures 4
23 through 11 of Domino, please.

24 A (Witness complies.)

25 Jeff?

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1 Q Yes, Dr. Stern?

2 A You wanted the durations, the note names,
3 the scales degrees. Was there another question in
4 there?

5 Q If by "duration" you mean the rhythmic
6 value, then yeah --

7 A Durations, yeah, 8th notes, dotted
8 quarters, whatever.

9 Q Yes, that's fine, Dr. Stern, yes.

10 A Okay. What I did is I used kind of a
11 code. I just put "E," and then sometimes I just
12 wrote a line, so I didn't have to write out every
13 single one. So you just know that whole row is a
14 bunch of 8th notes.

15 MR. MOVIT: Okay, so what we'd like to do now
16 is take a break.

17 Kim is going to send me this document by
18 PDF to New York, so I can ask questions about it.
19 It will a very short break.

20 THE WITNESS: Fine. Thank you.

21 MS. JACKSON: Off the video 1:38.

22 (A recess was taken from
23 1:38 p.m. to 1:59 p.m.)

24 THE VIDEOGRAPHER: Back on the video record,
25 2:00.

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1 MR. MOVIT: Back on the record.

2 Q Dr. Stern, do you have Exhibit 44 in front
3 of you?

4 A Yes.

5 Q Okay. If you would please turn to
6 the second page.

7 A Yes.

8 Q Okay, for measure 9, Dr. Stern, in BRC
9 Original --

10 A Yes.

11 Q -- could you please read into the record
12 the scale degrees in that measure.

13 A Sure. 6 1 6 1 6 1 1 3.

14 Q Oh, I just said measure 9, sir. There is
15 no 3 in measure 9; correct?

16 A I'm sorry, I finished out the phrase. I
17 went into measure --

18 Q Okay. Just for a clear record, then, sir,
19 could you please -- I'm going to just ask the
20 question again. If you could read the scale degrees
21 in measure 9 of BRC Original --

22 A No problem.

23 6 1 6 1 6 1 1.

24 Q And those are the same scale degrees in
25 measure 10 of BRC Final; correct?

Page 20

1 A Correct.

2 Q And, Dr. Stern, that would be an
3 oscillation between 6 and 1; correct?

4 A Correct.

5 Q Dr. Stern, is it fair to stay that an
6 oscillation between 6 and 1 is not anything that a
7 single composer is entitled to monopolize?

8 A When you're talking about just going back
9 and forth between any two scale degrees, of course
10 not. Melodic identity comes about through certain
11 patterns of those scale degrees.

12 Q So the answer to my question, then, would
13 be "yes"?

14 A Yes.

15 Q Dr. Stern, if you can please read out the
16 rhythmic values in just measure 9 of BRC Original,
17 please.

18 A All 8th notes.

19 Q Okay. And measure 10 of BRC Final has the
20 identical rhythmic values; correct?

21 A Correct.

22 Q Is it fair to say, Dr. Stern that the use
23 of all 8th notes is not something that any single
24 composer is entitled to monopolize?

25 A Yes.

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1 Q Dr. Stern, if you would please look at
2 measure 10 of BRC Original.

3 A Yes.

4 Q If you could please read out the scale
5 degree in measure 10 of BRC Original.

6 A It's 3. And the notes should read F
7 sharp.

8 Q So just so we have a clear record,
9 Dr. Stern, can you just read out the notes in
10 measure 9 as well of BRC Original.

11 A Certainly.

12 B D B D B D D F sharp.

13 Q Dr. Stern, I said just measure 9.

14 A B --

15 Q There is no F sharp in measure 9; correct?

16 A Right. I'll have to get use to segmenting
17 the idea.

18 Q So if you could please, just so we have a
19 clear record, sir, if you could please just read out
20 the notes in just measure 9, please.

21 A B D B D B D D.

22 Q Okay, thank you, sir.

23 And, Dr. Stern, can you please let us know
24 the rhythmic value of the F sharp in measure 10 of
25 BRC Original.